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CITY OF LIVERMORE

CALIFORNIA REGIONAL WATER

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Ms. Loretta Barsamian, Executive Officer
California Regional Water Quality Control Board
San Francisco Bay Region
1515 Clay Street, Suite 1400
Oakland CA 94612

February 8, 2002

Subject: Mandatory Minimum Penalty, Complaint No. R2-2002-0004

Dear Ms. Barsamian:

I would like to take an opportunity to present several thoughts on the Mandatory Minimum Penalty (MMP) being assessed to the City of Livermore under Complaint No. R2-2002-004.

While the City has waived its right to a formal hearing, we did *not* do so because we agree with the findings of the complaint that the violations were of a "serious" nature, but rather because we understand that the Board and Staff have limited flexibility in assessing these penalties. Therefore, while Staff may agree that there are mitigating circumstances surrounding a violation, there may not be sufficient flexibility under Water Code Sections 13385(h) to waive a MMP.

As the compliant alleges, the Livermore Water Reclamation Plant (LWRP) did exceed its cyanide limit on five occasions between January 1, 2000 and August 1, 2000. The phenomenon of cyanide appearing in the effluent from wastewater treatment plants is common, and has been discussed in the industry for years. The prevailing thought was that the results were errors, caused by some interference or problem in analytical methodology. It now appears that emerging research will suggest that treatment plants are actually *creating* small amounts of cyanide during the chlorination process, and furthermore, that much of this created cyanide is destroyed during dechlorination.

The LWRP discharges to the East Bay Dischargers Authority (EBDA) pipeline, and dechlorination is subsequently performed on the combined effluent prior to discharge to the San Francisco Bay. Therefore, the LWRP does *not* dechlorinate its effluent prior to discharge to the EBDA pipeline. Based on this configuration and the emerging research on cyanide, it would appear that our NPDES permit in effect at that time, Order No. 94-073 contained an incorrect cyanide sampling point that in effect, set up our monitoring to find a chlorination byproduct over which we had no control, and that would be removed prior to discharge to the receiving waters.

This conclusion is supported by several factors. Cyanide monitoring of the EBDA outfall, after dechlorination shows that cyanide concentrations were below discharge or detection limits on the dates corresponding to our violations. Also, Board staff corrected this problem in our subsequent NPDES permit, issued in October 2000 by moving the cyanide sample location to the combined EBDA outfall, after dechlorination.

The date of the reissued NPDES permit is also important in this discussion of how the MMP provisions are impacting local agencies. The permit in effect at the time of the violations, Order No. 94-073, was set to expire in July 1999. However, due to delays in incorporating provisions of the California Toxics Rule and the State Implementation Plan for the CTR, our permit issuance was delayed until October 2000. Had the permit been reissued on time, none of the discharges noted in this complaint would have been "violations" due to the inclusion of the correct sample location.

The intent of my comments is not to disparage Board staff, or to complain about the appropriate sample locations for complex pollutants or delays in reissuing the permit, although these issues are now costing us \$15,000 in penalties we would not otherwise be subject to.

Developing Waste Discharge Requirements is a complex and difficult process, and there are bound to be occasional errors. Instead, my criticism is of the Mandatory Minimum Penalty provisions of the Water Code, or the interpretation of those provisions that seem to take away all flexibility or discretion of Board staff in accounting for mitigating circumstances surrounding apparent violations.

Therefore, we are providing copies of this letter to local legislators and adding our voice to the growing list of agencies with concerns over the content and implementation of this important water code section. We feel the *intent* of the legislation creating the MMP provisions was to impose penalties for serious violations that had real, measurable impacts on water quality. However, it seems that instead, the implementation of SB 709 has resulted in penalties being assessed for smaller, reporting and sampling violations that the discharger has little or no control over, and that had no impact on water quality. Hopefully, modifications to Water Code can be identified to give the Regional Boards appropriate latitude to consider the nature and circumstances of violations when imposing a Mandatory Minimum Penalty.

Thank you for the opportunity to comment on these issues. If you would like to discuss this matter further, please do not hesitate to contact me at (925) 373-5233.

Sincerely,



Darren Greenwood
Water Resources Manager

Cc: Linda Barton, City Manager
Mike Miller, Public Services Director
Dan Sodergren, City Attorney
Tom Torlakson, State Senate – District 7
Lynn Leach, State Assembly – District 15
Ellen Tauscher, U.S. Representative – District 10
Scott Hagarty, Alameda County Supervisor
Carole Migden, State Assembly – District 13